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Short Title: Change DCR Process for Unclaimed Property.-AB

(Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF CULTURAL RESOURCES, OFFICE OF ARCHIVES AND HISTORY, TO USE THE NET PROCEEDS OF THE SALE OF ARTIFACTS FOR MAINTENANCE OR CONSERVATION OF OTHER ARTIFACTS; TO CLARIFY THE PROCESS FOR TRANSFERRING TITLE OF UNCLAIMED OR UNDOCUMENTED PROPERTY LOANED TO MUSEUMS AND HISTORICAL REPOSITORIES TO THOSE MUSEUMS AND HISTORICAL REPOSITORIES; TO SET A TIME LIMITATION ON CONFIDENTIALITY OF RECORDS; TO CLARIFY THAT PHOTOGRAPHS AND VIDEO RECORDINGS OF DERELICT VESSELS OR SHIPWRECKS ARE PUBLIC RECORDS WHEN IN THE CUSTODY OF NORTH CAROLINA AGENCIES; AND TO PROVIDE THAT CERTAIN MERCHANDISE CREDITS ARE NOT DEEMED ABANDONED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-7 reads as rewritten:

"§ 121-7. **Historical museums.**

(a) The Department of Cultural Resources shall maintain and administer State historic ~~attractions sites and museums~~ under the management of the Office of Archives and History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history or specialized regional history museums may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on ~~permanent~~-loan any artifact owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited



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1 to the State treasury to the credit of in the Office of Archives and History Artifact Fund to the
2 credit of the museum or archives that had custody of the artifact sold and shall be used only for
3 the ~~purchase expenses associated with the purchase, maintenance, or conservation~~ of other
4 artifacts. No artifact curated by any agency of the Department of Cultural Resources may be
5 pledged or mortgaged.

6 ...
7 (e) ~~Title to an artifact whose ownership is unknown or whose owner cannot be located~~
8 ~~passes to the Department of Cultural Resources if:~~

9 (1) ~~The artifact was placed on loan with the Office of Archives and History for a~~
10 ~~period of time exceeding five years or for an indefinite period of time or the~~
11 ~~artifact's status with the Office of Archives and History as a loan, gift,~~
12 ~~purchase, or other arrangement is unknown; and~~

13 (2) ~~The artifact has been a part of the inventory of the Office of Archives and~~
14 ~~History for more than five years; and~~

15 (3) ~~The Department of Cultural Resources makes a reasonable effort, including~~
16 ~~a diligent search of its own records, to locate and inform the owner, his heirs~~
17 ~~or successors, that the Office of Archives and History is holding the artifact~~
18 ~~and to clarify the artifact's status with that Office.~~

19 ~~To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources~~
20 ~~shall mail, first class postage prepaid, a notice to the last known address of the owner of the~~
21 ~~artifact or the last known address of the owner's heirs or successors. The Department need not~~
22 ~~mail a notice, if after exercising due diligence to find a record within the Department of~~
23 ~~Cultural Resources indicating the owner of the artifact and his latest address, that information is~~
24 ~~not available. If no claim is made within 90 days from the date that notice is mailed, the~~
25 ~~Department of Cultural Resources shall publish a notice in three papers of general circulation~~
26 ~~once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is~~
27 ~~submitted to the Department of Cultural Resources, the Department may determine that legal~~
28 ~~title to the artifact is vested in the Office of Archives and History.~~

29 (d) ~~Any person claiming legal title to an artifact to which the North Carolina Office of~~
30 ~~Archives and History also claims title as provided by subsection (c) may file a claim with the~~
31 ~~Department of Cultural Resources on a form prescribed by the Department. If the claimant is~~
32 ~~not the owner from whom the Department originally obtained the artifact, the claimant shall~~
33 ~~state in addition to any other information required by the Department, the facts surrounding the~~
34 ~~unavailability of the person who originally loaned or bestowed the property to the Office of~~
35 ~~Archives and History and the basis for the claim to title of the artifact. If the Department of~~
36 ~~Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of~~
37 ~~the artifact, the Department shall return the artifact to the owner. If the Department determines~~
38 ~~that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the~~
39 ~~determination as provided by Chapter 150B."~~

40 **SECTION 2.** Chapter 121 of the General Statutes is amended by adding a new
41 Article to read:

42 "Article 5.

43 "Museum and Archives Repository Property.

44 "**§ 121-50. Legislative findings and declaration.**

45 The General Assembly finds and declares that the growth and maintenance of collections in
46 museums and archives repositories, both public and private, is a matter of general public
47 interest to the citizens of North Carolina. Museums and archives repositories of all kinds
48 depend upon loans of various articles of property to promote and encourage the teaching of
49 North Carolina and local history and to preserve and care for historical manuscripts, materials,
50 and artifacts. The uncertainty regarding title to and responsibility for loaned property is a
51 hindrance to museums and archives repositories in their efforts to maintain, repair, and dispose

1 of property in their possession. The purpose of this Article is to terminate stale claims and to
2 fairly and reasonably allocate responsibilities for the determination of title and financial
3 responsibilities in certain cases.

4 **"§ 121-51. Definitions.**

5 The following definitions apply in this Article:

- 6 (1) Address. – A description of the location of the lender as shown on a museum
7 or archives repository's records that is sufficient for delivery by mail.
- 8 (2) Archives repository. – An archives repository shall have the same meaning
9 as the term "North Carolina State Archives" as defined in G.S. 121-2(7).
- 10 (3) Loan. – The placement of property with a museum or archives repository
11 that is not accompanied by a transfer of title of the property to the museum
12 or archives repository and for which there is some record that the owner
13 intended to retain title to the property. The term "loan" does not include
14 transfers between museums, between archives repositories, or between
15 museums and archives repositories unless the transferring institution
16 specifically provides in writing that the transfer is a loan under this Article.
- 17 (4) Museum. – A museum shall include any museum or historic site
18 administered by the Department of Cultural Resources, including the term
19 "North Carolina Museum of History" as defined in G.S. 121-2(6).
- 20 (5) Property. – A tangible object under the care of a museum or archives
21 repository that has intrinsic historic, artistic, scientific, educational, or
22 cultural value.
- 23 (6) Valid claim. – A written notice of intent to preserve an interest in property
24 on loan to a museum or archives repository, including all of the following:
- 25 a. A description of the property adequate to enable the museum or
26 archives repository to identify the property.
- 27 b. Documentation sufficient to establish the claimant as owner of the
28 property.
- 29 c. A statement attesting to the truth, to the best of the signer's
30 knowledge, of all information included in or with the notice.
- 31 d. The signature, under penalty of perjury, of the claimant or a person
32 authorized to act on behalf of the claimant.

33 **"§ 121-52. Acquisition of title to loaned property.**

34 (a) A museum or archives repository may acquire the title to documented property
35 loaned to the museum or archives repository if (i) the term of the loan has expired and at least
36 seven years have passed without written or other contact between the lender and the museum or
37 archives repository or (ii) the term of the loan does not have an expiration date but at least
38 seven years have passed without written or other contact between the lender and the museum or
39 archives repository since the loan was made.

40 (b) To acquire title to property under this section, the museum or archives repository
41 shall first send a notice by certified mail to the lender's last known address. The notice must
42 include all of the following:

- 43 (1) The lender's name and last known address.
- 44 (2) A brief and general description of the property.
- 45 (3) A statement that the term of the loan has been terminated.
- 46 (4) The date or approximate date, if known, when the owner loaned the property
47 to the museum or archives repository.
- 48 (5) The name, address, and telephone number of the museum or archives
49 repository representative to contact for more information or to claim
50 ownership.

- 1 (6) A statement that outlines the schedule and requirements for the museum or
2 archives repository to acquire title under this section.
- 3 (c) If a valid claim to the property is not received by the museum or archives repository
4 within 30 days from the date the notice was mailed, or if the museum or archives repository
5 does not have an address for the lender, the museum or archives repository shall comply with
6 the following:
- 7 (1) If the property has an estimated value in excess of \$10,000, the museum or
8 archives repository shall make a reasonable effort to locate and inform the
9 owner, the owner's heirs or successors and publish a notice for no less than
10 365 consecutive days on an official Internet Web site created by the
11 Department of Cultural Resources for such purpose.
- 12 (2) If the property has an estimated value that is less than or equal to \$10,000,
13 the museum or archives repository shall make a reasonable effort to locate
14 and inform the owner, the owner's heirs or successors and publish a notice
15 for no less than 180 consecutive days on an official Internet Web site created
16 by the Department of Cultural Resources for such purpose.
- 17 (3) The notices required by subdivisions (1) and (2) of this subsection shall
18 include all of the following:
- 19 a. The information described in subdivisions (1) through (5) of
20 subsection (b) of this section.
- 21 b. A digital image of the property and any documentation executed by
22 the parties.
- 23 c. The date that the notice was posted.
- 24 d. The date that the notice will be removed from the museum or
25 archives repository's official Internet Web site and a statement that
26 the museum or archives repository will acquire title to the loaned
27 property if a valid claim to the property is not received by the
28 museum or archives repository within 45 days of that date.
- 29 (d) If the requirements of this section are satisfied and if a valid claim to the loaned
30 property is received by the museum or archives repository within 45 days after the date of the
31 last publication of the notice required by subsection (c) of this section, the Department of
32 Cultural Resources shall have 45 days to determine whether the claim is valid and that the
33 claimant is the legal owner of the artifact. If the Department determines that the claim is valid
34 and that the claimant is the legal owner of the artifact, the Department shall return the artifact to
35 the owner at the owner's expense.
- 36 (e) If the requirements of this section are satisfied and if a valid claim to the loaned
37 property is not received by the museum or archives repository within 45 days after the date of
38 the last publication of the notice required by subsection (c) of this section, the museum or
39 archives repository acquires the title to the property on the forty-sixth day after the date of the
40 last publication of the notice under subsection (c) of this section. Upon acquiring title, the
41 museum or archives repository shall own the property free and clear from all claims of
42 ownership.
- 43 **§ 121-53. Disputed ownership.**
- 44 (a) If the Department determines that the claim of ownership is not valid and rejects the
45 claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B of
46 the General Statutes. The burden shall be on the claimant to prove that the claimant is the legal
47 owner of the property.
- 48 (b) Nothing in this Article shall be construed to convert a loan into a bailment. All
49 equitable and legal defenses shall be available to museums and archives repositories in the
50 event of a dispute over ownership.

1 (c) In cases of disputed ownership of loaned property, a museum or archives repository
2 may maintain possession of loaned property during the dispute and shall not be held liable for
3 its refusal to surrender loaned property in its possession except in reliance upon a court order or
4 judgment.

5 **"§ 121-54. Responsibilities of owners of loaned property; representation of ownership.**

6 (a) Lender's Responsibilities. – In all cases, it shall be the responsibility of the owner of
7 loaned property to notify the museum or archives repository in writing of the owner's identity
8 and current address. It shall be the responsibility of any new owner acquiring loaned property
9 to notify the museum or archives repository within 60 days of his or her name and address. Any
10 owner of loaned property shall, upon request from a museum or archives repository holding
11 loaned property, promptly provide evidence of ownership satisfactory to the museum or
12 archives repository. This section shall apply to all changes in ownership, whether by sale, gift,
13 devise, operation of law, or any other means. So long as a museum or archives repository deals
14 honestly and in good faith, no museum or archives repository shall be prejudiced by reason of
15 any failure to deal with the true owner of any loaned property if the owner has failed to comply
16 with the requirements of this section.

17 (b) Representation of Ownership. – A museum or archives repository shall not be liable
18 for actions taken in reasonable reliance upon the representations of the person who first
19 transfers an item of property to the museum or archives repository that the transferee is the true
20 owner of the loaned property.

21 **"§ 121-55. Museum or archives repository's lien for expenses.**

22 (a) When the lender of loaned property is known, a museum or archives repository may
23 charge the lender expenses for the reasonable care of loaned property unclaimed after the
24 expiration date of the loan.

25 (b) When the lender of loaned property is unknown, a museum or archives repository
26 may place a lien against the value of specific loaned property for expenses reasonably
27 necessary to protect the loaned property from ordinary decay and deterioration due to natural
28 causes, theft, or vandalism.

29 **"§ 121-56. Acquisition of undocumented property.**

30 (a) Property in the possession of a museum or archives repository that the museum or
31 archives repository has reason to believe may be on loan and for which the museum or archives
32 repository does not know the owner or have any reasonable means of determining the owner
33 becomes the property of the museum or archives repository as provided in this section. If no
34 person has claimed the property within seven years after the museum or archives repository or
35 a predecessor or assignor of the museum or archives repository took possession of the property,
36 then the museum or archives repository shall follow the notification process set out in
37 G.S. 121-52(c). Pursuant to G.S. 121-52(d), if the Department receives a claim and determines
38 that the claim is valid and that the claimant is the legal owner of the artifact, the Department
39 shall return the artifact to the owner at the owner's expense. Otherwise, after following the
40 notification process and consistent with G.S. 121-52(e), the museum or archives repository
41 shall become the owner of the property, shall acquire title to the property and shall own the
42 property free and clear from all claims of ownership.

43 (b) The requirements of G.S. 121-52 and G.S. 121-53 shall apply to valid and disputed
44 claims of ownership to undocumented property.

45 **"§ 121-57. Exclusivity of provisions.**

46 The provisions of this Article shall control the procedure and disposition of any property to
47 which it applies in lieu of any other procedure prescribed by law."

48 **SECTION 3.** Chapter 132 of the General Statutes is amended by adding a new
49 section to read:

50 **"§ 132-11. Time limitation on confidentiality of records.**

1 (a) Notwithstanding any other provision of law, all restrictions on access to public
2 records shall expire 100 years after the creation of the record.

3 (b) Subsection (a) of this section shall apply to any public record in existence at the
4 time of, or created after, the effective date of this section.

5 (c) No provision of this section shall be construed to authorize or require the opening of
6 any record that meets any of the following criteria:

7 (1) Is ordered to be sealed by any state or federal court, except as provided by
8 that court.

9 (2) Is prohibited from being disclosed under federal law, rule, or regulation.

10 (3) Contains federal Social Security numbers.

11 (4) Is a juvenile, probationer, parolee, post-releasee, or prison inmate record,
12 including medical and mental health records.

13 (5) Contains detailed plans and drawings of public buildings and infrastructure
14 facilities.

15 (d) For purposes of this section, the custodian of the record shall be the Department of
16 Cultural Resources or other agency in actual possession of the record."

17 **SECTION 4.(a)** G.S. 121-25 reads as rewritten:

18 **"§ 121-25. License to conduct exploration, recovery or salvage operations.**

19 (a) Any qualified person, firm or corporation desiring to conduct any type of
20 exploration, recovery or salvage operations, in the course of which any part of a derelict vessel
21 or its contents or other archaeological site may be removed, displaced or destroyed, shall first
22 make application to the Department of Cultural Resources and obtain a permit or license to
23 conduct such operations. If the Department of Cultural Resources shall find that the granting of
24 such permit or license is in the best interest of the State, it may grant such applicant a permit or
25 license for such a period of time and under such conditions as the Department may deem to be
26 in the best interest of the State. ~~Such~~ Except as otherwise provided in subsection (b) of this
27 section, such permit or license may include but need not be limited to any of the following:

28 (1) Payment of monetary fee to be set by the ~~Department;~~Department.

29 (2) That a portion or all of the historic material or artifacts be delivered to
30 custody and possession of the ~~Department;~~Department.

31 (3) That a portion of all of such relics or artifacts may be sold or retained by the
32 licensee; licensee.

33 (4) That a portion or all of such relics or artifacts may be sold or traded by the
34 Department.

35 Permits or licenses may be renewed upon or prior to expiration upon such terms as the
36 applicant and the Department may mutually agree. Holders of permits or licenses shall be
37 responsible for obtaining permission of any federal agencies having jurisdiction, including the
38 United States Coast Guard, the United States Department of the Navy and the United States
39 Army Corps of Engineers prior to conducting any salvaging operations.

40 (b) All photographs, video recordings, or other documentary materials of a derelict
41 vessel or shipwreck or its contents, relics, artifacts, or historic materials in the custody of any
42 agency of North Carolina government or its subdivisions shall be a public record pursuant to
43 G.S. 132-1. There shall be no limitation on the use of or no requirement to alter any such
44 photograph, video recordings, or other documentary material, and any such provision in any
45 agreement, permit, or license shall be void and unenforceable as a matter of public policy."

46 **SECTION 4.(b)** This section is effective when this act becomes law and applies to
47 any agreement entered into, or any permit or license issued or renewed, on or after that date.

48 **SECTION 4.5.(a)** G.S. 116B-54 reads as rewritten:

49 **"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or**
50 **electronic gift cards, prepaid calling cards, certain manufactured home buyer**

1 ~~deposits, and certain credit balances.~~certain credit balances, unclaimed lottery
2 prizes, and certain merchandise credits.

3 (a) A forfeited reservation deposit is not abandoned property. For the purposes of this
4 section, the term "reservation deposit" means an amount of money paid to a business
5 association to guarantee that the business association holds a specific service, such as a room
6 accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a
7 specified date and place. The term "reservation deposit" does not include an application fee, a
8 utility deposit, or a deposit made toward the purchase of real property.

9 (b) A gift certificate or electronic gift card is not abandoned property when the gift
10 certificate or electronic gift card:

11 (1) Conspicuously states that the gift certificate or electronic gift card does not
12 expire;

13 (2) Bears no expiration date; or

14 (3) States that a date of expiration printed on the gift certificate or electronic gift
15 card is not applicable in North Carolina.

16 (c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is
17 not abandoned property.

18 (d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A
19 or G.S. 143-143.21B is not abandoned property and is not subject to this Article.

20 (e) Credit balances as shown on the records of a business association to or for the
21 benefit of another business association, shall not constitute abandoned property. For purposes
22 of this section, the term "credit balances" means items such as overpayments or underpayments
23 on the sale of goods or services.

24 (f) A lottery prize that remains unclaimed after the period set by the North Carolina
25 State Lottery Commission for claiming those prizes shall not constitute abandoned property.

26 (g) A card or certificate, whether paper, electronic, or other format, issued for a
27 merchandise credit that meets the requirements of subsection (b) of this section is not
28 abandoned property under G.S. 116B-53(c)(7)."

29 **SECTION 4.5.(b)** This section becomes effective July 1, 2012, and applies to
30 merchandise credits issued on or after July 1, 2012. This section shall not be construed to affect
31 the interpretation of any statute that is the subject of pending litigation or future litigation based
32 on merchandise credits issued prior to the effective date of this section.

33 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
34 law.